IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 298 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/07/2004 in WP No: 10563 OF 2004 on the file of the High Court.)

Between:

Shashi Raj Kumar, S/o. Sri Surya Kanth Pershad, aged about 50 years,
Occ:Business,
R/o. H.No. 3-5-651 & 652, Narayanaguda, Hyderabad.

..... APPELLANT

AND

1 The Municipal Commissioner, Municipal Corporation of Hyderabad, Hyderabad.
2 The Assistant Commissioner, Municipal Corporation of Hyderabad, Narayanaguda Circle, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the respondents in refusing to accept the plans by insisting for production of TSLR Certificate in respect of H.Nos. 3-6-651 as arbitrary and without jurisdiction.

Counsel for the Appellant: MR.C.RAGHU

Counsel for the Respondents: MR.RAMA RAO GHANTA

The Court made the following Oral Judgment: (per Sri Devinder Gupta, CJ)

Challenge in this appeal is to the order passed by the learned single judge disposing of the writ petition at the admission stage itself without having the counter affidavit from the opposite party. Appellant-petitioner being aggrieved by the said order, filed the present appeal.

Writ petition was filed seeking Mandamus to declare the action of respondents in reusing to accept the plans by insisting for production of TSLR Certificate in respect of H. Nos. 3-6-651, as arbitrary and without jurisdiction. Learned single judge did not decide the question as to whether the action of the respondents was or was not justified or whether there was any statutory rule requiring production of such TSLR Certificate.

As a matter of fact, appellant's case was that he wanted to serve notice on the respondents as required under Section 428 of the Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as "the Act") expressing his intention to erect a building, which was not at all entertained.

As a matter of fact, the very writ petition was almost premature in nature inasmuch as the prayer of the appellant was to accept the application of the appellant and the only direction which can be issued to the respondent-Corporation in such like cases was to take appropriate decision on the application of the appellant in accordance with law.

Under Section 429 of the Act, Commissioner of the respondent-Corporation may require the person who has served the notice under Section 428 to furnish plans or any other documents. In case, the respondent-Corporation is not satisfied with the plan or any other documents furnished by the appellant, there is no reason why the respondent will not appraise the appellant of the lacuna in his application.

In that view of the matter, we allow the appeal and set aside the impugned order and also allow the writ petition with direction to the respondent-Corporation that as and when notice is proposed to be served by the appellant-writ petitioner intending to erect a building, the same shall be entertained and will be dealt with in accordance with law and in case there will be any objection for not entertaining the same, respondent will pass appropriate orders on that petition and convey the same to the

appellant along with the reasons for such rejection.

Needless to add that in case further information is required to be submitted by the appellant, respondents will act in accordance with the procedure under Section 429 of the Act.

The writ appeal is accordingly allowed. No costs.

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DEVINDER GUPTA,CJ

DATE: 16th March, 2005

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B. SESHASAYANA REDDY,J

Pnb

To

1 The Municipal Commissioner, Municipal Corporation of Hyderabad, Hyderabad.
2 The Assistant Commissioner, Municipal Corporation of Hyderabad, Narayanaguda Circle, Hyderabad

3 Two CD copies.